



C.R.P.No. 4429 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4429 of 2023

and

C.M.P.No. 26773 of 2023

R. Tamilselvi

.. Petitioner

Vs

K.K. Rajamani

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 21.08.2023 in I.A.No.4 of 2023 in O.S.No.64 of 2020 on the file of the learned Subordinate Judge, Mettupalayam, Coimbatore District.

For Petitioner : Mr. C.P. Sivamohan

For respondent :Mr. Kadarkarai

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.4 of 2023 in O.S.No.64 of 2020 on the file of the Subordinate Judge, Mettupalayam, Coimbatore District. The plaintiff preferred this revision.



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2. Before the trial Court, the plaintiff / petitioner herein filed application under Order XXIV Rule 1(3) of CPC to permit the petitioner / plaintiff to withdraw the suit with liberty to file fresh suit with respect to the subject matter of the suit. That application was dismissed by the trial Judge stating that the defendant / respondent already filed written statement in the year 2021 denying the plaintiff's title but immediately, she has not taken any steps. After three years, at the time of the trial, the plaintiff come forward with the application, as such is not permissible and also relief claimed is also subject to the laws of limitation. Aggrieved by the said finding, the plaintiff has preferred this revision.

3. Admittedly, the plaintiff / petitioner herein filed the suit for bare injunction against the defendant / respondent herein. In that suit, the defendant / respondent herein filed written statement denying the plaintiff's title in para No.7 of the written statement. However, the plaintiff / petitioner herein has not filed suit for declaration of title immediately, but now she filed application seeking permission of the Court to withdraw the suit with liberty to file comprehensive suit.



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4. As per the findings of the trial Court, immediately after written statement, plaintiff / petitioner herein has not taken steps and the relief also barred by limitation. But according to the plaintiff / petitioner herein, she is the admitted owner of the property. If opportunity is not give to prove the title, her valuable right will be defeated. If at all any limitation aspect is supporting the defendant / respondent herein, liberty is granted to him to raise the same in the fresh suit filed by the plaintiff / petitioner herein. Therefore, the order passed by the trial Judge in I.A.No.4 of 2023 in O.S.No.64 of 2020 is set aside.

5. In the result, the Civil Revision Petition is allowed. No costs.
Consequently, connected miscellaneous petition is closed.

08.12.2023

Index :Yes/No

Neutral Citation :Yes/No

AT

To

The Subordinate Judge, Mettupalayam, Coimbatore District.

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T.V.THAMILSELVI, J.

AT

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